

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ETIENNE L CHOQUETTE,

Petitioner,

v.

HOLBROOK,

Respondent.

CASE NO. 3:15-CV-05839-RBL-JRC

ORDER DENYING MOTION TO
APPOINT COUNSEL

The District Court referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b) (1) (A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner seeks relief from a state conviction pursuant to 28 U.S.C. § 2254.

Before the Court is petitioner's second motion to appoint counsel. Dkt. 23. Respondent opposes plaintiff's motion. Dkt. 24.

There is no constitutional right to appointment of counsel in habeas petitions because they are civil, not criminal, in nature. *See Terrovona v. Kincheloe*, 912 F.3d 1176, 1181 (9th Cir. 1990). And although the Court must appoint counsel if an evidentiary hearing is warranted, Rule

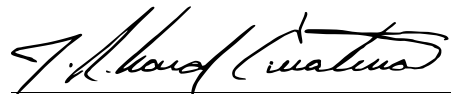
1 8(c) of the Rules Governing Section 2254 Cases, petitioner has not established good cause for
2 such a hearing in this case.

3 The Court may request an attorney to represent indigent civil litigants under 28 U.S.C. §
4 1915(e)(1), but should do so only under “exceptional circumstances.” *Agyeman v. Corrections*
5 *Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). “A finding of exceptional circumstances
6 requires an evaluation of both the likelihood of success on the merits and the ability of the
7 plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved.”
8 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). These factors must be viewed
9 together before reaching a decision on a request for counsel under § 1915(e)(1). *Id.*

10 Here, petitioner has failed to establish that exceptional circumstances warrant the
11 appointment of counsel at this time. Petitioner states that he only has a high school education
12 and no experience with the law or legal system. Dkt. 23 at 1. Plaintiff states that he does not have
13 the ability to investigate his case or perform depositions and there are facts that require more
14 research. *Id.* Plaintiff also includes his prison trust account statement. *Id.* at 5.

15 However, petitioner does not demonstrate that he is likely to succeed on the merits of his
16 habeas claim. Likewise, petitioner has made numerous arguments to the Court that suggest he is
17 able to articulate his claims *pro se*. Accordingly, petitioner’s motion to appoint counsel is
18 denied. Dkt. 23.

19 Dated this 23rd day of May, 2016.

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22 J. Richard Creatura
23 United States Magistrate Judge
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